



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

ENE/171478

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2016, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Energy Assistance Program - Milwaukee County in regard to Energy Assistance (EA), a telephonic hearing was held on February 11, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's income when he applied for EA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: [REDACTED], Utility Mgr., Energy Services Worker
Energy Assistance Program - Milwaukee County
1220 W Vliet Street
Suite 304
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On January 14, 2016 petitioner applied for EA. The agency determined his monthly income by using the gross income from the three months previous to the application. He was awarded EA in the total amount of \$178.

DISCUSSION

Energy Assistance (EA) is a state-run program established by federal law. See 42 USC § 8621, et seq. and Wis. Stat. §16.957. Eligibility depends upon a household's income not exceeding 60% of the state average. See Wis. Stat. §16.957 and *Wisconsin Home Energy Assistance Program, Operations Manual (Manual)*, §2.3.1 available online at <http://homeenergyplus.wi.gov/docview.asp?docid=27044&locid=25>. Unless the applicant is a seasonal worker or self-employed, financial eligibility is based upon the household's gross income during the three months before the application date. See *Manual* §2.3.2. The agency is instructed to "allow no deductions from gross income for employment-related expenses, childcare, medical expenses, or for any other reason. Allow no deductions from gross income except as specifically identified in this chapter, or as part of the Income Deducted Table (Section 2.3.8)." Section 2.3.8 only relates to child support.

Petitioner's argument at hearing was that he should be allowed to deduct his mileage expense from his gross income as he is an independent commissioned driver for [REDACTED] [REDACTED] [REDACTED]. Unfortunately for petitioner, the agency is instructed to allow no deductions from gross income for employment-related expenses, except as specifically identified in the *Manual*. There is no evidence to suggest that petitioner's income requires any of the deductions identified in the *Manual*. The EA program is authorized under different legislation and operated under different policies than FoodShare, Child Care and Medical Assistance, and therefore different rules apply within different programs. And while I understand it may not seem fair to the petitioner that the income and available deductions are counted the way they are, I lack the equitable powers to grant the relief sought. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). Therefore, I will uphold the EA determination.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's income when he applied for EA.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Administration, 101 East Wilson Street, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of April, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 27, 2016.

Energy Assistance Program - Milwaukee County
DOA - Energy Assistance